



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,470	02/27/2004	Michael L. Crook	047970/268132	8553
826 7590 03/05/2007 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER FIGUEROA, ADRIANA	
			ART UNIT 3637	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/05/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/789,470

Applicant(s)

CROOK, MICHAEL L.

Examiner

Adriana Figueroa

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 36-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 3, Figure 3 in the reply filed on February 5, 2007 is acknowledged. Claim 35 is withdrawn from consideration as being drawn towards a nonelected species.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in claim 42, the third membrane and how it overlaps must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3637

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 21 is objected to because of the following informalities: in line 2, the phrase "said roof is adjacent at least..." is incorrect. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 42 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 42 describe the limitation "a third membrane" in line 4, it is not clear how this third membrane overlaps the first and second membranes.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 65 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 65 recites the limitation "front edge" and "rear edge" it is unclear whether the front edge and the rear edge are new limitations or are the same as the "first edge" and "second edge". For examination purposes the Examiner will consider these limitations to be the same.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6-14, 16-18, 21-27, 29, 31, 32, 37-40, 45, 46, 48-54, 57-63, 65-69, 72-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Lachapelle (US 6,425,213).

Claims 1-24 are consider to be directed to the protective roof cover, since the roof is not part of the claim any reference to this will be considered as functional language and is not given any patentable weight.

Regarding claims 1-3, 6-11, 53, 54, 57-62 Lachapelle discloses a roof (R) having an upper surface (u), a first edge (f), and a second edge (s) that is substantially parallel to, and offset from, said first edge; and a membrane (M) that covers at least a portion of

Art Unit: 3637

said upper surface, said membrane extending from said first edge to said second edge, (annotated Figure 3).

wherein said membrane is substantially impermeable to water, (Column 3, Lines 10-13, 31-33).

wherein said membrane extends over said first edge (f) of said roof, over said second edge (s) of said roof and over a third edge (t) of said roof, said third edge being substantially perpendicular to said first edge of said roof, (annotated Figure 3).

wherein said first (f) and second (s) edges are side edges of said roof (R) and said third edge (t) of said roof is a front edge of said roof; wherein said membrane extends over a ridge (g) of said roof (annotated Figure 3).

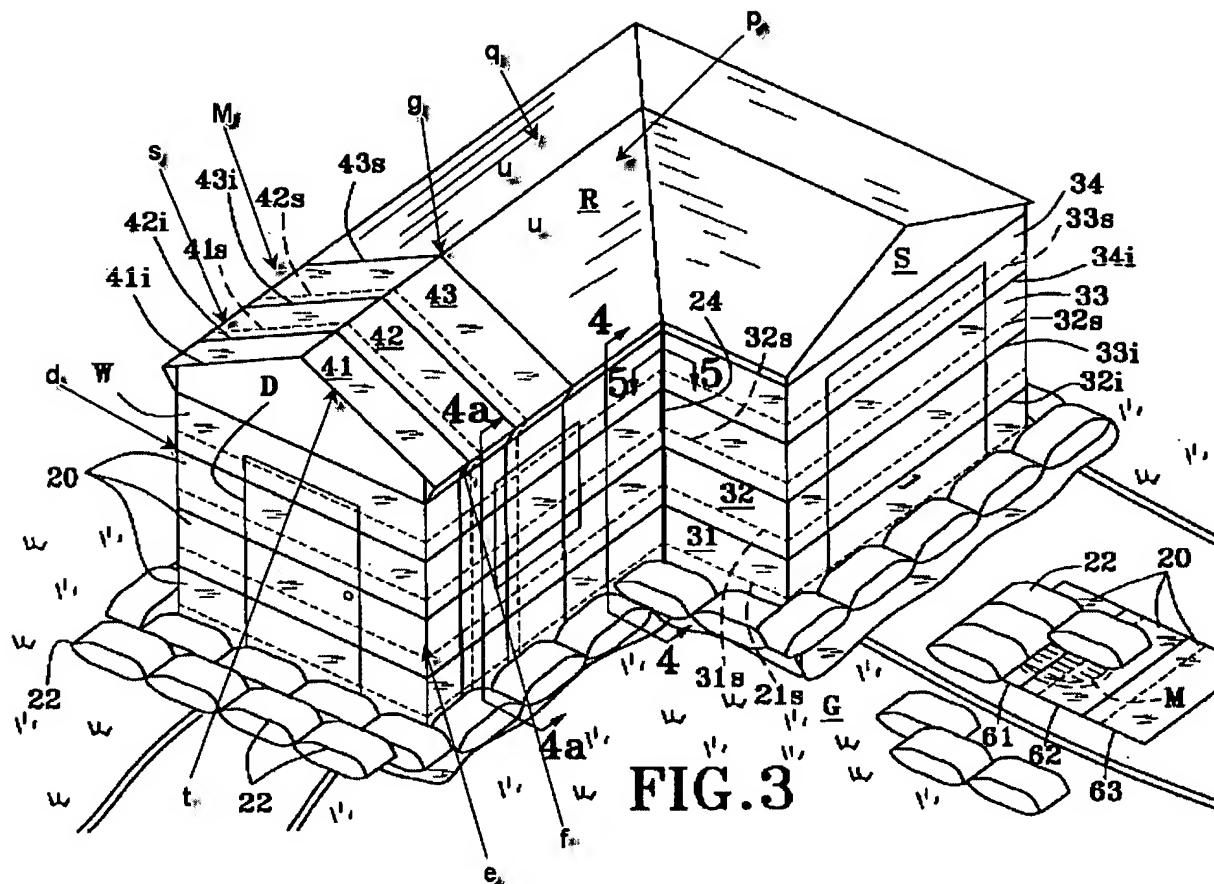
Regarding claims 12 -14, 63, 65, 66 Lachapelle discloses a membrane (M) comprising at least one elongate strip of material (41, 42, 43) that extends substantially perpendicular to said ridge (g) extending from a first edge (f) of said roof, over a ridge (g) of said roof, and to a second edge (s) of said roof, (annotated Figure 3).

Regarding claims 16-18, 67-69, Lachapelle discloses a roof (R) comprising a first substantially planar roof portion (p) and a second substantially planar roof portion (q), both said first and said second roof portions having an upper roof surface (u); said first and second roof portions are connected by a ridge portion (g) disposed between said first and second roof portions; and said first and second roof portions form an angle of less than 170 degrees, (annotated Figure 3).

wherein said membrane (M) substantially covers the entire upper roof surface of said first and second roof portion, (annotated Figure 3), (Column 3, Lines 10-13).

Regarding claims 21-24, 72-75, Lachapelle discloses a roof (R) that is adjacent to at least one substantially vertical wall that is adjacent said first edge (f); said membrane extends over said first edge of said roof adjacent said wall; and said protective roof cover comprises a girdle portion (34) that extends adjacent said wall to hold a portion of said membrane in place relative to said wall, (annotated Figure 3, Figure 4a);

wherein said girdle portion comprises an elongate strip of material (34) that holds said portion of said membrane (M) in place relative to said wall at least in part by urging said portion of said membrane into frictional contact with said wall (Figure 4a), and extending from a first substantially vertical side edge (d) of said wall to a second substantially vertical side edge (e) of said wall, (annotated Figure 3).



Lachapelle (US 6,425,213)

Claims 25-27 are considered to be directed to the method of providing a protective roof cover, since the shingles are not part of the claim any reference to this will be considered as intended use and is not given any patentable weight.

The claimed method steps would have been obvious method of installing the roof cover of Lapachelle. Furthermore, the roof cover of Lapachelle would create a barrier that will protect the shingles during high wind conditions.



Regarding claims 29 and 45, Lapachelle discloses a roof cover (M) that is substantially impermeable to water, (Column 4, Line 67).

Regarding claims 31, 32, 38, 48-52 the claimed method steps would have been obvious method of installing the roof cover of Lapachelle.

Regarding claims 37 and 38, Lapachelle discloses the steps of covering at least a portion of said roof (R) with a first membrane (M); and covering at least a portion of said roof with a second membrane that at least partially overlaps said first membrane, (annotated Figure 3), (Column 7, Lines 30-34). It is obvious that following these steps the entire upper surface of the roof will be covered with the first and second membranes.

Regarding claims 39 and 40, Lapachelle discloses a first membrane (M) comprising a first plurality of substantially parallel strips of material (41, 42, 43), wherein at least two of said substantially parallel strips of material at least partially overlap, (annotated Figure 3).

Regarding claim 46, Lapachelle discloses a roof cover that is provided as a roll, (Column 5, Lines 5-7), therefore the method step of unrolling said roof cover would have been an obvious method of installing the roof cover of Lapachelle.

Regarding claim 52, Lapachelle discloses a girdle portion comprising an elongate strip of material (34), (annotated Figure 3, Figure 4a).

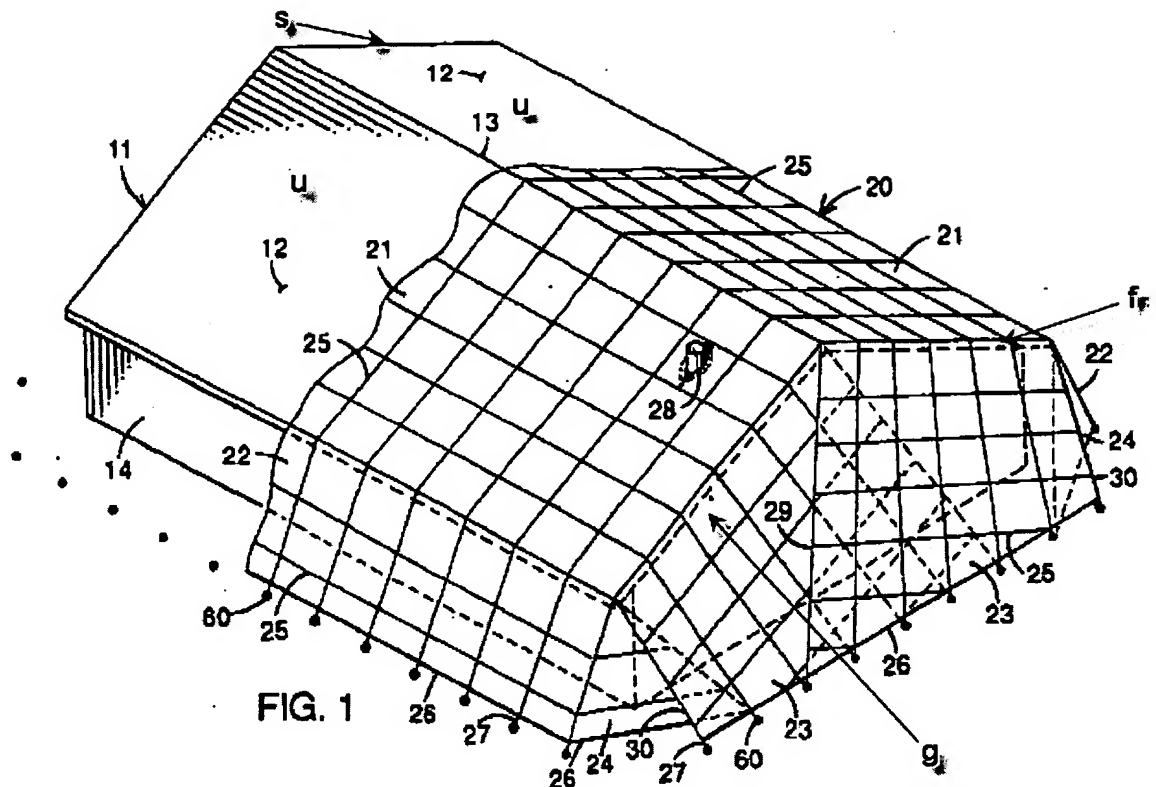
7. Claims 1, 12, 15, 19, 20, 53, 64, 70, 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Gitlin (US 5,791,090).

Art Unit: 3637

Regarding claims 1, 12, 15, 53, 64, Gitlin discloses a roof (12) having an upper surface (u), a first edge (f), and a second edge (s) that is substantially parallel to, and offset from, said first edge; and a membrane (20) that covers at least a portion of said upper surface, said membrane extending from said first edge to said second edge, wherein said membrane extends over a ridge (13) of said roof, (annotated Figure 1);

wherein said ridge (11) is substantially perpendicular to said first (f) and second (s) edges; and said ridge extends from said first edge to said second edge, (annotated Figure 1).

Regarding claims 19, 20, 70, 71 Gitlin discloses a membrane substantially covering a gable portion (g) of said roof, (annotated Figure 1); wherein said membrane (20) comprises two or more substantially parallel lengths of material (25) that are positioned adjacent said gable portion to at least partially shield said gable portion from wind, (annotated Figure 1), (Column 2, Line 67, Column 3, Line 1).



Gitlin (US 5,791,090)

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 33 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Valente (US 5,092,099). Lachapelle discloses as discussed in claims 1, 25 and 53 but does not disclose the membrane

Art Unit: 3637

comprising a length of shrink wrap material. However, Valente teaches a membrane (43) comprising a length of shrink wrap material, (Figures 7, 8), (Column 3, Line 67).

Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the membrane of Lapachelle to be shrink wrap as taught by Valente in order to provide a stronger seal.

9. Claims 5, 30 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Neuner (6,363,681). Lachapelle discloses as discussed in claims 1, 25 and 53 but does not disclose the membrane comprising a length of stretch wrap material. However, Neuner teaches a membrane (42) comprising a length of stretch wrap material, (Figures 1, 2), (Column 3, Lines 63-65). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the membrane of Lapachelle to be stretch wrap material as taught by Neuner in order to provide a stronger seal against water.

10. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Davis (US 6,256,956). Lachapelle discloses as discussed in claim 27 but does not disclose the roof cover being substantially impermeable to air. However, Davis teaches a protective membrane (10) that is impermeable to air, (Column 4, Lines 20-21). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify

Art Unit: 3637

the membrane of Lapachelle to be impermeable to air as taught by Davis in order to provide a stronger protection of the roof.

11. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Zeidler (US 6,122,889). The claimed method step of positioning the roof cover would have been obvious method of installing the roof cover of Lapachelle. Lapachelle does not disclose the step of applying heat to the roof cover. However, Zeidler teaches a method of applying heat to the roof cover. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the method of Lapachelle to apply heat to the roof cover as taught by Zeidler in order to provide a seamless, waterproof and thermoplastic cover layer.

12. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Bettencourt (US 2002/0095898). Lachapelle discloses as discussed in claim 25 but does not disclose the roof cover comprising tarpaulin. However, Bettencourt teaches a roof cover comprising tarpaulin. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the membrane of Lapachelle to be tarpaulin as taught by Bettencourt in order to provide a membrane that is easy to disassembly.

13. Claims 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Gitlin (US 5,791,090).

Regarding claim 41, Lachapelle discloses as discussed in claim 39, but does not disclose the first plurality of strips of material being substantially perpendicular to said second plurality of strips of material. However, Gitlin teaches a roof cover (20) having the first plurality of strips of material (25) being substantially perpendicular to said second plurality of strips of material (25), (Figure 1). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the method of Lachapelle to have the first plurality of strips of material being substantially perpendicular to said second plurality of strips of material as taught by Gitlin in order to provide a stronger roof protection.

Regarding claim 42, Lachapelle discloses as discussed in claim 37, but does not disclose the step of covering at least a portion of said roof with a third membrane that at least partially overlaps said first and second membranes. However, Gitlin teaches a roof cover (20) including a third membrane (22) that at least partially overlaps said first and second membranes (25), (Figures 1, 3); wherein the step of covering the upper surface of the roof with the roof cover would include the step of installing the third membrane. Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the method of Lachapelle to include the third membrane as taught by Gitlin in order to provide a stronger protection.

Regarding claim 43, the method of Lapachelle modified by Gitlin would have both said second and said third membranes covering substantially the entire upper surface of said roof, (Figure 1).

Regarding claim 44, Lapachelle modified by Gitlin discloses as discussed above, Lapachelle discloses a first membrane comprising a first plurality of substantially parallel strips of material (41, 42, 43); said second membrane comprises a second plurality of substantially parallel strips of material (41, 42, 43), (Figure 3), (Column 7, Lines 30-34). Lapachelle does not disclose a third membrane comprising a third plurality of substantially parallel strips of material; said first plurality of strips is substantially parallel to said third plurality of strips; and said first plurality of strips is substantially perpendicular to said second plurality of strips. However, Gitlin teaches a roof cover having a first and second membranes (25) and a third membrane (22), comprising a third plurality of substantially parallel strips of material; said first plurality of strips is substantially parallel to said third plurality of strips; and said first plurality of strips is substantially perpendicular to said second plurality of strips, (Figures 1, 3). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the membrane of Lapachelle to include the third membrane as taught by Gitlin in order to provide a stronger protection.

14. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lachapelle (US 6,425,213) in view of Rogers (US 6,742,305). Lapachelle discloses as discussed in claim 46 but does not disclose the step of using a roller to support said roll

Art Unit: 3637

as said roof cover is unrolled onto said roof from said roll. However, Rogers teaches the use of a roller (20), (Figure 2A). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the method of Lapachelle to include a roller as taught by Rogers in order to make easier the installation of the roof cover.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. [www.globalwrap.com](http://www.globalwrap.com) , year 2000 teaches the use of a membrane to wrap buildings; Meyer (US 6,810,626) teaches the use of a rolled protective cover to protect building structures; Floyd (US 5,608,992) teaches a protective cover made of tarp.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adriana Figueroa whose telephone number is 571-272-8281. The examiner can normally be reached on Monday-Friday 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AF / AF  
02/26/2007

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

